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Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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Working Group on the Smuggling of Migrants
Vienna, 4–5 July 2018

Draft Report

I. Introduction

1. Pursuant to resolution 5/3, adopted by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its fifth session, an open-ended intergovernmental interim working group on the smuggling of migrants was established to advise and assist the Conference in the implementation of its mandate with regard to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The first meeting of the Working Group was held from 30 May to 1 June 2012, the second from 11 to 13 November 2013, the third from 18 to 20 November 2015 and the fourth from 11 to 13 September 2017.

2. In its resolution 7/1, entitled "Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto", the Conference decided, inter alia, that the Working Group would be a constant element of the Conference of the Parties, forwarding its reports and recommendations to the Conference, and encouraged the Working Group of the Conference to consider meeting on an annual basis, as needed, and to hold its meetings consecutively, in order to ensure the effective use of resources.

3. In its resolution 8/2, the Conference decided to continue the process of establishing the mechanism for the review of the implementation of the Convention and the Protocols thereto based on the recommendations contained in the report on the open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto, held in Vienna on 6 and 7 June 2016 (CTOC/COP/WG.8/2016/2). In the same resolution, the Conference also decided to elaborate specific procedures and rules for the functioning of the review mechanism for consideration and adoption by the Conference at its ninth session, which was to be guided by the principles and characteristics set out in Conference resolution 5/5.

4. In resolution 8/2, the Conference further decided that the review mechanism would progressively address all the articles of the Convention and the Protocols thereto for each of the instruments that States parties were parties to, grouped in thematic clusters in accordance with the content of their provisions and that, in order to review each thematic cluster of articles, the relevant working group would, in the next two years, with the assistance of the Secretariat, define a short, precise and focused self-assessment questionnaire.

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5. Also in resolution 8/2, the Conference requested all States parties to submit responses to the existing questionnaires on the implementation of the Convention and the Protocols thereto.

II. Recommendations

6. At its meeting held in Vienna on 4 and 5 July 2018, the Working Group on Smuggling of Migrants adopted the recommendations presented below for consideration by the Conference.

A. Recommendations on criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrants smuggling operations

7. The Working Group recommended that the Conference of the Parties consider the following recommendations for adoption. States Parties should:

(a) Facilitate, where possible, capacity-building assistance directed at training law enforcement officers at the local level regarding the various forms of smuggling of migrants;

(b) Identify law enforcement focal points for addressing smuggling of migrants and facilitate regular exchanges of best practice between these focal points;

(c) Take measures to build trust with smuggled migrants, with the aim of facilitating cooperation with law enforcement officials.

B. General Recommendations

8. The Working Group recommended that the Conference of the Parties consider the following recommendations for adoption. States Parties should:

(a) Address the underlying causes of smuggling of migrants in a coordinated and direct manner at the national, bilateral, regional and international level, including through the development and implementation of social and economic policies directed at improving education, crime prevention and health, and alleviating poverty.

III. Summary of deliberations

9. At its meeting on 4 July 2018, a number of general statements were delivered at the outset of the Working Group, namely from Uruguay, El Salvador and the European Union. All three speakers stressed the importance of upholding the human rights of migrants, including the need to refrain from criminalizing migrants.

10. Uruguay stressed that it is in States interests to address underlying causes of smuggling of migrants in a coordinated and direct way, and to encourage broad social and economic policies for education, crime prevention, health and justice to avoid situations which give rise to smuggling of migrants. Uruguay stressed the importance of international cooperation at the official and informal level. While recognizing the right of States to develop and implement policies governing migratory flows within their territory, Uruguay called for States to avoid violations of human rights of migrants and their families, especially those of vulnerable persons and children. Uruguay emphasized that refusing to allow boats containing migrants to dock and incarcerating children in jails, separate from their parents, are morally inexcusable violations of the most elemental ethical rules.

11. The European Union stressed the role of criminal networks in placing migrants in dangerous situations, violating their fundamental rights and even causing death. Despite efforts to protect migrants, smuggling continued to be a reality throughout

the European Union, necessitating the reinforcement of transnational cooperation, including cooperation at the EU level, with strategic partners, international organizations and civil society. It was noted that the Smuggling of Migrants Protocol continued to have a key role to play, as did UNODC as one of the EU's primary partners in this field.

12. El Salvador highlighted the importance of international cooperation in enabling origin, transit and destination countries to dismantle smuggling networks and ensure the protection of human rights of all migrants and families. El Salvador condemned policies and regulations that promote detention of migrant children and separate them from their families, and called for criminal justice responses to be comprehensive, and take into account the rights of migrants and their families. El Salvador noted that there are State obligations in this respect that exist outside of the Smuggling of Migrants Protocol. El Salvador also called on States parties to support negotiations on the Global Compact on Safe, Orderly and Regular Migration as an excellent opportunity to address the challenges of migration as well as its contribution to sustainable development.

13. Under agenda item 2, the Working Group resumed discussions on the draft questionnaire by returning to the specific questions with outstanding concerns, following the two readings of the document that occurred at the last meeting of the Working Group on Smuggling of Migrants.

14. Throughout the discussions, a number of speakers stressed the need to ensure consistency with the language of the Smuggling of Migrants Protocol, calling for questions which go beyond the scope of the Protocol not to be included in the questionnaire. One speaker suggested making a recommendation to the Conference of the Parties for guidance on how to deal with questions which go beyond the scope of the instrument.

15. A number of speakers also expressed a desire to avoid duplication between the questionnaire on smuggling of migrants and the questionnaire dealing with the parent convention, UNTOC, reiterating that several questions would be better placed in the UNTOC questionnaire.

16. On the basis of comments made during the third reading of the text, the Chair developed a revised version of the non-paper.

17. The Working Group then turned to consider item 3 on the agenda, namely criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations.

18. The Working Group heard a presentation from Mr. Kamel Samir, Chief, Office for International Cooperation, Office of the Prosecutor General, Egypt, who delivered a presentation regarding Egypt's experience in investigating and prosecuting perpetrators of migrant smuggling. The panellist outlined the applicability of the Egyptian Constitution of 2014 and Law 82 of 2016, to Egypt's response to smuggling of migrants. He also informed the Working Group of how the Egyptian National Coordination Committee for Preventing and Combating Illegal Migration (NCCPIM), as a group of 26 national stakeholders, works to address national and international coordination between policies, plans and programmes to prevent and combat illegal migration and protect smuggled migrants and witnesses, including their rights to legal aid, privacy, confidentiality and psychological assistance. The panellist also outlined the good cooperation enjoyed between Egyptian authorities and UNODC, providing examples of national, regional and international initiatives to counteract smuggling of migrants.

19. On behalf of GRULAC, Mr. Enrique Octavio Baeza Pulido, Official of the Federal Public Prosecutor's Office, Specialized Unit for Investigation of Trafficking in Minors, Persons and Organs, Special Attorney for Organized Crime Investigation, Attorney-General's Office, Mexico, delivered a presentation on Mexico's experience with smuggling of migrants, outlining the primary routes and nationalities of those detected. The panellist highlighted the often deplorable conditions by which migrants

are smuggled. He also noted the more recent use of Uber drivers who are often unaware they are assisting organized crime networks. The panellist informed that, in Mexico, smuggled migrants are no longer treated as criminals but rather as victims, entitled to a range of human rights protections. While these migrants can be compelled to make a statement in court, a number of protection measures are implemented where this occurs. The panellist highlighted good cooperation by the Ibero-American Network of Prosecutors, as well as with UNODC through the SOMMEX training programme which provides a range of tailored assistance in preventing and combating of smuggling of migrants.

20. Mr. Pravit Roykaew, Senior Expert Public Prosecutor, Thailand, delivered remarks on the Thai experience. He explained the overlaps between smuggling of migrants and trafficking in persons. While in Thailand limited availability of data renders it difficult to determine the real magnitude of the problem, UNODC figures estimate that, of 660,000 irregular migrants entering Thailand per year, 80 per cent rely on the services of smugglers. He noted a considerable demand for low skilled migrant workers in sectors such as fishing, agriculture and domestic work, alongside lack of economic opportunities in countries of origin. Current challenges Thailand faces include the low risk of detection at some official border checkpoints; difficulties in obtaining information from smuggled migrants and limited use of mutual legal assistance channels within the ASEAN region. The speaker noted that, at present, there is no specific law dealing with smuggling of migrants in Thailand, meaning smuggled migrants are addressed under immigration legislation and generally deported once detected. However, a new draft law will provide improved scope to address migrant smuggling, and should also enable Thailand to ratify the Smuggling of Migrants Protocol by the end of 2018.

IV. Organization of the meeting

A. Opening of the meeting

21. The Working Group on Smuggling of Migrants met in Vienna on 4 and 5 July 2018, holding a total of four meetings.

22. The meeting was opened by Francesco Testa (Italy), Chair of the Working Group. He addressed the meeting and presented an overview of the mandate of the Working Group, its objectives and the subjects under its consideration.

23. At the opening of the meeting, a statement was made by the representative of El Salvador, the European Union on behalf of the States members of the European Union, and Uruguay.

B. Statements

24. General introductory statements were made by a representative of the Secretariat under agenda items 2 and 3.

25. Under agenda item 2, entitled "Preparation of the questionnaire to review the implementation of the Smuggling of Migrants Protocol" statements were made by representatives of the following parties to the Smuggling of Migrants Protocol: Canada, Cuba, Egypt, El Salvador, Fiji, Italy, Japan, Nigeria, Paraguay, Spain, United States of America, and Uruguay.

26. Under agenda item 2, statements were made by representative of the following State not signatory to the Smuggling of Migrants Protocol: Iran (Islamic Republic of).

27. Under agenda item 3, entitled "Criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations", with the Chair presiding, the discussion was led by

the following panellists: Kamel Samir (Egypt), Damaris Baglietto (Mexico) and Pravit Roykaew (Thailand).

28. Under agenda item 3, statements were made by representatives of the following parties to the Smuggling of Migrants Protocol: Nigeria, Sudan, and the United States of America.

C. Adoption of the agenda and organization of work

29. At its 1st meeting, on 4 July 2018, the Working Group adopted by consensus the following agenda, as orally amended:

1. Organizational matters:
   (a) Opening of the meeting;
   (b) Adoption of the agenda and organization of work.
2. Preparation of the questionnaire to review the implementation of the Smuggling of Migrants Protocol.
3. Criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations.
4. Other matters.
5. Adoption of the report.

D. Attendance

30. The following parties to the Smuggling of Migrants Protocol were represented at the meeting: Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Bahrain, Belgium, Brazil, Canada, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, European Union, Fiji, France, Gambia, Germany, Greece, India, Iraq, Italy, Japan, Kazakhstan, Kuwait, Lebanon, Libya, Luxembourg, Malta, Mexico, Myanmar, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Switzerland, Syrian Arab Republic, Tajikistan, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of) [...].

31. The following States signatories to the Smuggling of Migrants Protocol were represented by observers: Bolivia (Plurinational State of), Sri Lanka, Thailand [...].

32. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers: Iran (Islamic Republic of), Israel, Malaysia, Morocco, Nepal, Pakistan, Singapore, Sudan, United Arab Emirates, Yemen [...].

33. The United Nations High Commissioner for Refugees (UNHCR) was represented by observers.

34. The Sovereign Military Order of Malta, Other entity maintaining Permanent Observer Office, was represented by an observer.

35. The following intergovernmental organizations were represented by observers: Commonwealth of Independent States (CIS), Food and Agriculture Organization of the United Nations (FAO), INTERPOL, Parliamentary Assembly of the Mediterranean (PAM), The Permanent Observer Mission of the Gulf Cooperation Council to the United Nations Vienna (GCC) [...].

36. A list of participants is contained in document CTOC/COP/WG.7/2018/INF/1/Rev.1.

E. Documentation

37. The Working Group had before it the following:

(a) Annotated provisional agenda (CTOC/COP/WG.7/2018/1);

(b) Background paper prepared by the Secretariat on criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrants smuggling operations (CTOC/COP/WG.7/2018/2);

(c) Non-paper containing a draft questionnaire for the review of the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in accordance with resolution 8/2 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (CTOC/COP/WG.7/2018/CRP.1);

V. Adoption of the report

38. On 5 July 2018, the Working Group adopted the present report on its meeting.